SUPREME COURT, U. S.

In the
Supreme Court of the United States

October Term, 1971

No. 71-1265

HUGH GALLAGHER and WARD CANFIELD, individually and as Commissioners of the Civil Service Commission of the City of Minneapolis, et al.

Petitioners

vs.

GERALD CARTER, WILLIE HARRIS, HERBERT HILL III, BENJAMIN E. McHIE, and WARD K. MITCHELL, on behalf of themselves and all other persons similarly situated

and

MINNEAPOLIS COMMISSION ON HUMAN RELATIONS

Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinions of the panel of the Court of Appeals dated September 9, 1971 and of that Court en banc dated January 7, 1972 are reported at 452 F.2d 315 and are set forth in the Appendix to the Petition. The decree rendered by the District Court on March 9, 1972 is incorporated in the panel decision of the Court of Appeals. The Findings of Fact and Conclusions of Law entered by the District Court on that same day are not officially reported but may be found at 3 CCH EPD ¶8205 and 3 BNA FEP Cases

692. These Findings of Fact and Conclusions of Law are fully set forth in Respondents' Appendix to this Brief. The Respondents' Appendix also contains the Preliminary Injunction and Order of the District Court dated November 5, 1970 which declared this action to be a class action and enjoined hiring of fire fighters pending a hearing on the merits, as well as certain recent resolutions of the Minneapolis City Council with respect to this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 42, Section 1981:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalities, taxes, licenses, and exactions of every kind, and to no other.

STATEMENT OF THE CASE

In this action the plaintiffs, on behalf of the class of persons similarly situated, sought relief from discriminatory hiring practices in the Minneapolis Fire Department. Shortly after the filing of the action, the Minneapolis Commission on Human Relations, which is charged by law with the purpose of carrying forward the policies of the City of Minneapolis in the field of human relations, was allowed to intervene as a party plaintiff. At the time this action was commenced there were about 535 men in the Minneapolis Fire Department. (Ex. 93, Deposition of Fire Chief Hall, p. 48).* There were no Blacks, American Indians or Spanish-surnamed Americans. (R. 154-56). The last minority employee hired was a Black man hired in 1944, who was dismissed shortly thereafter. (R. 157-60). In light of the ever-increasing minority population in Minneapolis and in light of the fact that over five percent of the entire work force of the City of Minneapolis was non-white in 1970 (Exs. 48-49), the District Court concluded that the statistical evidence presented a prima facie case of racial discrimination. (Resp. App. A-10).

The District Court made further detailed findings regarding various hiring practices which had the effect of eliminating minority persons from employment as fire fighters. (Resp. App. A-10 to A-26). In short, the District Court found that these practices together with the established

*The printed record in the Court of Appeals which has been certified to this Court does not contain the exhibits received in evidence by the Court, including two depositions. That record likewise eliminates certain detailed tables from the Stipulation of the parties.

In this Brief, references will be made to Petitioners' Appendix (Pet. App.), Respondents' Appendix (Resp. App.), the printed record (R.), or the particular exhibit involved.

bad reputation of the Minneapolis Fire Department for fair hiring practices had created and perpetuated an all-white department. (Resp. App. A-5, A-28). A challenge to the sufficiency of these findings was rejected in the Court of Appeals. (Pet. App. A-13).

For relief, the District Court ordered certain changes in qualification procedures, most of which were affirmed in the Court of Appeals and none of which are placed in issue in the Petition to this Court. The District Court also ordered that an absolute preference should be given in employment to the top twenty minority applicants who meet established qualifications. (Pet. App. A-4 to A-6). This order was based on findings that even if discriminatory hiring practices were eliminated only one or two minority persons would likely be hired, and that the hiring of this token number of minority persons would not overcome the effects of past discrimination and would not dispel the continuing effects of the Department's bad reputation for fair employment practices with respect to minority persons. (Resp. App. A-41 to 42). As the District Court found, "What is needed now to correct the effects of the past twenty-five years is the immediate certification of at least twenty minority fire fighters." (Resp. App. A-42).

The panel decision of the Eighth Circuit rejected the absolute preference. A timely petition for rehearing was submitted by the Respondents herein and supported by Amicus Curiae Briefs by the United States and the NAACP. After granting rehearing en banc, the Court of Appeals modified the District Court's order to provide a limited minority preference involving the alternative hiring of one minority person and two non-minority persons until such time as a total of twenty of the next sixty fire fighters hired were minority persons.

ARGUMENT

I.

THE RECORD BELOW PROVIDES NO BASIS IN FACT FOR ASSUMPTIONS WHICH UNDERLIE THE QUESTIONS PETITIONERS SEEK TO BE REVIEWED BY THIS COURT.

Throughout their Petition, the two original defendants who seek review in this Court contend that the order of the District Court as modified by the Court of Appeals requires impermissible racial discrimination in favor of minority applicants over equally or more qualified white applicants. Even if this statement were supported by the record below, the Respondents contend that a minority preference which will not involve hiring of unqualified persons is constitutionally permissible when it is found necessary to eliminate the effects of past discrimination. The District Court found that apart from some alteration of the hiring order for qualified minority applicants, the effects of at least twenty-five years of discriminatory practices would continue. (Resp. App. A-42). The record below, however, does not support the underlying assumption in the questions presented for review that the challenged hiring procedure will in fact favor minority applicants over equally or more qualified white applicants. Because that issue is based on speculation and not fact, this Court is not presented with the requisite record for deciding the Constitutional issue presented in the Petition. Cf. *Rescue Army v. Municipal Court of City of Los Angeles*, 331 U.S. 549 (1947).

The questions Petitioners present to this Court assume that the examination to be used in selecting fire fighters

will rate each of two hundred or more qualified fire fighter applicants in order of his relative likelihood of success on the job. (Almost five hundred persons applied for the fire fighter position in the summer of 1970. (R. 36). If, as in the past (R. 41), only one-half of those persons qualify, the pool of eligible applicants will number well over two hundred.) If the record provided a factual basis for this assumption, then the issue might properly be placed before this Court. On the contrary, however, the record does not support the assumption that over two hundred qualified persons will be ranked in order of their relative merit. What the record does demonstrate is the difficulty of providing a statistically significant basis even for separating qualified from unqualified applicants. (R. 79-83).

The assumption which the Petitioners make must be viewed in light of the actual circumstances in which the hiring order required by the Court of Appeals will be applied. Apart from the operation of the veterans preference, selection of fire fighters is made from eligibility lists which rank applicants in order of their examination scores. These scores differ by hundreths of a point. For instance, in 1964 there was a difference of 3.20 points between the final scores of the sixth and thirtieth persons on the list. (R. 50; Stip. ¶53. The printed record does not include names, rankings, and scores). Nevertheless, petitioners suggest that these minute variations in test scores establish applicants' relative qualifications for the purpose of litigating a constitutional issue. The Court of Appeals en banc termed such an assumption "speculative" and questioned whether the qualifying test would in fact rank "qualified applicants with precision, statistical validity, and predictive significance." (Pet. App. A-32).

Validation efforts required before use of new examinations (Pet. App. A-7) will not remedy this uncertainty. The difficulty in general of obtaining statistically significant predictions of future job performance has already been mentioned. With respect to minority applicants, these validation efforts are even more suspect. Under the EEOC Guidelines on Employment Testing Procedures, "a test should be validated for each minority group with which it is used." 29 *C.F.R.* §1607.4(a). The validation of the new fire fighter examinations must initially be conducted by comparing job performance ratings of present fire fighters, all of whom are white, with their scores on the examination to be given minority and non-minority applicants. The predictive value of test scores of minority persons will not really be known until some of the minority applicants have been hired and their subsequent work performance evaluated. Under these circumstances, it is speculative to assert that the minority preference will actually result in the hiring of "less qualified" minority applicants.*

The very hiring practices followed for years by the City of Minneapolis contradict the assertion made in the question presented to this Court. The record establishes that strict adherence to examination scores has never been found necessary to fulfill the "paramount interest" of the City in "promoting the efficiency of its Fire Department by having it composed of the best qualified individuals." Petition, p. 14. From among the pool of qualified applicants

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*It is possible that the challenged preference may never be implemented. The order entered on remand in the District Court on April 5, 1972 provides that regular hiring practices are to be followed if one-third of the persons hired at any particular time are minority persons. Only if the regular hiring order does not satisfy the one for two ratio will the preference be implemented.

examination scores are disregarded to assure hiring of veterans and Minneapolis residents. (R. 37-40; Exs. 56-57). The record in this action provides a graphic example of the application of the veterans preference. A total of thirty-four fire fighters with the Minneapolis Fire Department as of July 10, 1970 were hired as a result of examinations given in 1961. Over a period of fifteen months, twenty-three veterans were hired whose scores ranked from 13 through 152 on the eligibility list. Twenty-two months after the first veterans were hired, a group of eleven persons were hired, including ten non-veterans whose rankings on the eligibility list ranged from 9 through 28. (R. 50, Stip. ¶¶55-58. The names, scores, and rankings are not included in printed record). It follows that the City recognizes by its own practice that the relative examination scores of qualified applicants provide no firm basis for determining the relative qualifications of these persons.

The Minnesota Supreme Court has held that modification of the hiring order of qualified applicants is constitutionally permissible because all applicants, veterans and non-veterans, must establish their qualifications for a job on the basis of the same standards. See *State ex rel. Kangas v. McDonald*, 188 Minn. 156, 161, 246 N.W. 900 (1933). No different procedure is contemplated by the challenged decision of the Court of Appeals. Indeed, that decision, because of its limited effect, will have far less effect than the deviations from hiring in order of relative examination scores which are routinely followed.

The suggestion that the minority hiring procedure required by the Court of Appeals to remedy the effects of past discrimination will require the hiring of less qualified minority applicants is speculative and without support in

the record in this case. Furthermore, that very assumption is contradicted by years of similar practice in selecting fire fighters. For these reasons alone, the petition for a writ of certiorari should be denied.

II.

THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH OTHER DECISIONS OF THE COURTS OF APPEALS OR WITH OTHER DECISIONS OF THIS COURT.

The decision of the Eighth Circuit stands for the proposition that affirmative hiring remedies for minority persons as a class, including remedies such as alternative hiring of qualified minority and non-minority persons who have not been specific targets of past discriminatory practices, are a permissible means of overcoming the present and continuing effect of past discriminatory employment practices. That decision is consistent with decisions by other Courts of Appeals in related cases.

The Fifth Circuit upheld a one-for-one hiring preference in *Local 53, Asbestos Workers v. Vogler*, 407 F.2d 1047 (5th Cir. 1969). See also *Vogler v. McCarty*, 451 F. 2d 1236 (5th Cir. 1971). In *United States v. Local 86 Ironworkers*, 443 F.2d 544 (9th Cir. 1971), cert. denied, 404 U.S. 984 (1971), the Ninth Circuit affirmed in all respects a District Court order which required a thirty percent participation by Blacks in an apprenticeship program, see 315 F. Supp. at 1247, in addition to providing differing standards for Blacks on initiation fees, examination and experience requirements, and referral procedures, 315 F. Supp. at 1237-45. In another Title VII case, the Sixth Circuit held that the anti-preference provisions of Title

VII could not be read as a ban on affirmative relief against the continuing effects of past discrimination. *United States v. Local 38, Electrical Workers,* 428 F.2d 144 (6th Cir. 1970), cert. denied, 400 U.S. 943 (1970).*

The principle underlying the challenged ruling of the Eighth Circuit is also consistent with the approval of analogous percentage goals for minority workers in the "Philadelphia Plan" adopted pursuant to Executive Order 11246 and upheld by the Third Circuit over objections that it might violate the rights of white workers under the Due Process Clause of the Fifth Amendment and Title VII of the Civil Rights Act of 1964. *Contractors Ass'n of Eastern Pennsylvania v. Schultz,* 442 F.2d 159 (3rd Cir. 1971), cert. denied, 404 U.S. 854 (1971). The rationale of the Eighth Circuit decision is likewise consistent with the position of the Second Circuit in *Norwalk CORE v. Norwalk Development Agency,* 395 F.2d 920, 931-32 (2nd Cir. 1968) that a classification by race is permitted for the purpose of achieving equality and is required if necessary to prevent unequal treatment.

The petitioners suggest that the decision of the court below is inconsistent with statements of this Court in *Griggs v. Duke Power Co.,* 401 U.S. 424 (1971). See Petition, pp. 8, 10. The Eighth Circuit decision, however, is not in conflict with *Griggs. Griggs* dealt with the legality of certain education and testing requirements. The passages quoted establish that it is not a violation of Title VII to refuse to hire a demonstrably unqualified minority applicant.

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*While these cases arise under Title VII, the instant case arising under 42 *U.S.C.* §1981 presents the same essential questions of a possible conflict between general prohibitions against discrimination and specific requirements for affirmative relief in an action brought to remedy past discrimination.

They cannot be read to decide an issue not presented to the Court in *Griggs*—whether a classification by race which does not require the hiring of unqualified persons may be imposed if found necessary to the elimination of continuing effects of past discrimination.

III.

THE ALTERNATIVE PREFERENCE IMPOSED BY THE COURT OF APPEALS DOES NOT CONFLICT WITH THE EQUAL PROTECTION CLAUSE OR WITH 42 U.S.C. §1981.

Throughout their Petition, the two defendants who seek review in this Court assert that the decision below involves impermissible racial discrimination in favor of minority applicants. The argument above points out that the record in this case does not provide a factual basis for their contentions. What the record does show is that in order to remedy the continuing effects of past discrimination it was necessary to assure the hiring of a limited number of minority applicants who establish their qualifications for the fire fighter position. Upon making a finding of past and continuing discrimination, a federal court has "not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154 (1965). Faced with the record in this case and that mandate from this Court, the Court of Appeals had no alternative but to require a form of relief which would eliminate the effects of

past discrimination. Cf., *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).*

The District Court made crucial findings of fact based upon a detailed analysis of the past discriminatory qualifications for fire fighters in Minneapolis and the probable effect of the changes ordered. The District Court found that even with new hiring procedures the probabilities were that a small number—one or two—minority persons would be added to the Minneapolis Fire Department. The District Court further found that the addition of such a small number of minority persons would not dispel the continuing effects of past discrimination. Finally, that Court found that the past history of racial discrimination was such that the effects of the Department's bad reputation for hiring minority persons would continue unless at least twenty minority persons were hired. (Resp. App. A-42). These findings served as a basis for the opinion in the en banc decision. (Pet. App. A-32). They are not challenged here. In short, the record in this case supports the finding that the assurance of hiring of a relatively large group of minority applicants was necessary to the effective integration of the Minneapolis Fire Department.

Such an order may have the effect of giving a minority

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*The Petitioners suggest that *Swann*, a school desegragation case, is not applicable to the present employment action. Petition, p. 11. But *Swann* stands for the proposition that federal district courts have broad equitable power to create an effective remedy for past discrimination. It is the latest in a series of decisions which require that effective means be used now to eliminate segregated schools. In the present case the District Court found that other relief would not effectively remedy continuing discrimination, and that the assurance of hiring at least twenty minority firefighters was the only way to eliminate the effects of the past. *Swann* certainly supports implementation of such necessary and effective affirmative relief.

applicant a job which would otherwise go to a white applicant. But, as we have seen, preference in the order of hiring for employees of the City is the established means to assure employment for certain groups of qualified applicants. Given the necessity of framing appropriate relief where discrimination has been clearly established, the decision of the Court of Appeals to grant a minority preference for a limited time, for a limited number of persons, and in a manner calculated to have the least possible effect on white applicants is a sound and, all things considered, rather modest solution. The relief granted is calculated to eliminate discrimination on the basis of race and thus implement the essence of the Equal Protection Clause and the various Civil Rights Acts which have followed. The decision of the Court of Appeals does not raise questions which require review by this Court.

CONCLUSION

In light of the record in this case, the petitioners do not present questions of broad constitutional policy which this Court should feel compelled to review. The decision below is consistent with prior decisions in other circuits and with the principles upon which the Department of Justice relies as a basis for its enforcement of Title VII. That decision was not challenged by Commissioner Glover in the Court of Appeals, and is not challenged by his successor in office in this Court. The other original defendants or their successors in office (including the present Chief of the Fire Department) have not joined in the Petition. Furthermore, the City Council of Minneapolis by a substantial majority, has passed a resolution stating that it is not in the best interest of the City for the Civil Service Commissioners to

petition for certiorari and also directed that an Amicus Curiae brief be filed in this Court opposing such review. (Resp. App. A-47 to A-50). Apparently these persons and the City Council have determined that it is now time to end this litigation and proceed with the implementation of the order of the Court of Appeals. In such circumstances, the relief granted should not be disturbed by this Court.

Therefore, the respondents request that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

United States District Court
District of Minnesota
Fourth Division

4-70 Civ. 399

Gerald Carter, Willie Harris, Herbert Hill III, Benjamin E. McHie, and Ward K. Mitchell, on behalf of themselves and all other persons similarly situated,

Plaintiffs,

and

Minneapolis Commission on Human Relations,

Plaintiff-Intervenor,

vs.

Hugh Gallagher, Gleason Glover and Ward Canfield, individually and as Commissioners of the Civil Service Commission of the City of Minneapolis,

and

John Proctor, individually and as Personnel Director of the Civil Service Commission of the City of Minneapolis,

and

Kenneth Hall, individually and as Chief of the Fire Department of the City of Minneapolis,

Defendants.

Preliminary Injunction and Order

The plaintiffs herein have moved this Court for a preliminary injunction enjoining the defendants from giving the

proposed fire fighter examinations pending the completion of discovery in this matter and from filling any fire fighter positions on a permanent basis for the same time. The plaintiffs also moved this Court for an order permitting this action to proceed as a class action.

On the basis of the motions, affidavits and memoranda submitted to the Court, and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

1. The Minneapolis Fire Department has 544 employees, none of whom are Black or Indian.

2. That since World War II there have been no Blacks and no Indians employed as fire fighters with the Minneapolis Fire Department.

3. That Civil Service examinations for the positions of fire fighter are scheduled for the week of November 16, 1970.

4. That there are 495 applicants for that position, at least twenty-five of whom are members of minority groups.

5. That the plaintiffs, on the basis of the statistical evidence presented to the Court, have established a prima facie case of racial discrimination in hiring for the Minneapolis Fire Department.

6. That the plaintiffs and the class of persons whom they represent will suffer irreparable harm if the relief requested in their motion for a preliminary injunction is not granted.

7. That the plaintiffs properly represent the following classes of persons:

a. All those Black, Indian and other minority persons presently applying for employment with the Minneapolis Fire Department.

b. All those Black, Indian and other minority persons in the City of Minneapolis who are not applicants for employment with the Minneapolis Fire Department either because their applications were not approved or because they believed that equal employment opportunity is denied to Black, Indian and other minority applicants for such employment.

c. All those persons who would qualify as a veteran pursuant to Minnesota Statute 197.45 in seeking to claim a veterans' preference pursuant to said section but for the state and local durational residency requirements imposed therein.

8. That the Plaintiffs have no other adequate remedy at law.

Therefore, IT IS ORDERED, that:

1. The plaintiffs herein are permitted to proceed with this action as a class action.

2. That the defendants herein, their successors in office, agents, and employees, and all other persons in active concert or participation with them, are enjoined from conducting any civil service examinations, including written, agility, medical and psychological examinations, for the position of fire fighter with the Minneapolis Fire Department, until such time as the plaintiffs herein, including the intervening plaintiff, have had a reasonable time to complete such discovery as is reasonably necessary to permit them to prepare for a hearing on their requests for declaratory and

injunctive relief, and until these requests have been heard and determined by the Court.

3. For the same period of time referred to in the preceding paragraph, the defendants herein, their successors in office, agents, and employees, and all persons in active concert or participation with them, are enjoined from filling any fire fighter positions presently available in the Minneapolis Fire Department, and expected to be filled pursuant to the present examinations for employment as a fire fighter with the Minneapolis Fire Department, or any such positions that become available during the pendency of this order, provided that temporary appointments may be made which in no way provide that such temporary appointees have any right to continue in such positions after the fire fighter examinations are given and an eligibility list is established for such positions pursuant to further order of the Court.

4. That any party may make application to the Court for an order terminating the time within which discovery must be completed.

5. That the requirement for a bond is waived.

Dated: November 5, 1970. 4:45 o'clock p.m.

/s/ EARL R. LARSON,
United States District Judge.

[Copies may be served on defendants.]

Findings of Fact and Conclusions of Law

1. In this action, the plaintiffs alleged that past discriminatory hiring practices had created an all-white fire

department in Minneapolis, and that the present hiring practices for the position of fire fighter with that department do not overcome the continuing effects of past discrimination. The Court, in accordance with these findings, concludes that the present all-white Minneapolis Fire Department is the result of a pattern and practice of discrimination and that recent changes made in hiring practices do not overcome the continuing effect of that past discrimination.

2. This action was initiated late in September, 1970. On November 5, 1970, a preliminary injunction was issued which enjoined giving of fire fighter examinations then scheduled for November 16, 1970, and which enjoined permanent hiring of fire fighters until the plaintiffs' complaint had been heard and decided on the merits.

3. Testimony was heard by the Court on March 1 and 2, 1971 on the present motion for injunctive relief. The parties also submitted a statement of stipulated facts and stipulated to the admissibility of numerous exhibits.

4. The plaintiff Gerald Carter is a 29-year-old Black resident of the City of Minneapolis. He applied for a fire fighter job with the Minneapolis Fire Department during the summer of 1970.

5. The plaintiff Ward Mitchell is a 23-year-old Black resident of the City of Minneapolis. He applied for the position of fire fighter with the Minneapolis Fire Department during the summer of 1970.

6. The plaintiff, Benjamin McHie, is a 22-year-old Black resident of the City of Minneapolis. He was contacted during the summer of 1970 by representatives of

MOER, the local anti-poverty agency, regarding the possibility of applying for the fire fighter position. He refused to apply, because he felt that his chances of becoming a fire fighter were very slim, especially since there were no Black fire fighters.

7. Plaintiffs Carter and Mitchell represent the class of all minority (Black, Indian-American and Spanish-surnamed American) applicants for the position of fire fighter with the Minneapolis Fire Department.

8. Plaintiff McHie represents a class of minority persons who felt that there was insufficient opportunity for a minority person to become a fire fighter and therefore refused or neglected to seek such employment.

9. The plaintiff Herbert Hill III was, at the time this action was commenced and at the time of the hearing on the motion for a preliminary injunction, a Black resident of Minneapolis who had moved to this city after completing military service early in 1970. He had attempted to apply for the fire fighter position by submitting an application to unknown persons at the South Side Community Center. This application was never received by the Minneapolis Civil Service Commission. His present whereabouts are not known.

10. The plaintiff Willie Harris was, at the time this action commenced and at the time of the hearing on the motion for preliminary injunction, a Black resident of Minneapolis who had moved to this City after completing military service early in 1970. He had attempted to apply for the fire fighter position by submitting an application to unknown persons at the South Side Community Center. This application was never received by the Minneapolis Civil

Service Commission. His present whereabouts are not known.

11. The plaintiffs Harris and Hill represent a class of persons who seek civil service employment in Minneapolis and who are veterans, but who are unable to qualify for a veterans preference pursuant to M.S.A. §197.45 because they have not lived in the State of Minnesota and in the City of Minneapolis for a period of five years.

12. The intervening plaintiff, the Minneapolis Commission on Human Relations, is a legally constituted commission of the City of Minneapolis, the chief duty of which is implementing the policies of the City of Minneapolis in the field of human relations and of protecting and promoting the civil rights of the citizens of the City of Minneapolis.

13. The defendants Hugh Gallagher, Ward Canfield, and Gleason Glover are the Commissioners of the Civil Service Commission of the City of Minneapolis. In that capacity, they are responsible for recruiting, testing and certifying all applicants for employment in the classified service in the City of Minneapolis, including all members of the Minneapolis Fire Department.

14. The defendant, John Proctor, was, at the time this lawsuit was initiated, the Personnel Director of the Personnel Department of the Civil Service Commission of the City of Minneapolis. In that capacity, he was responsible to the Commissioners for the recruitment, testing, and certification of all applicants for employment in the classified service in the City of Minneapolis, including all members of the Minneapolis Fire Department.

15. The defendant Elisabeth A. M. White is the supervisor of Personnel Selection in the Personnel Department of the Minneapolis Civil Service Commission. In that capacity she has the immediate responsibility for direct supervision of those Civil Service employees who recruit, examine and certify applicants for employment in the classified service of the City of Minneapolis, including all members of the Minneapolis Fire Department. During the past year, she has exercised close supervision over the recruitment of applicants for fire fighter, the development of the examination plan for that position, and the development of the written examination to be used for fire fighter applicants.

16. The defendant Kenneth W. Hall is the chief of the Minneapolis Fire Department. He has held that position since 1962. In his position, he has the ultimate responsibility for all phases of the operation of the Minneapolis Fire Department.

17. The defendants in this case, in their respective official capacities, are acting under color of law.

18. The Minneapolis Fire Department at the present time has about 535 members. Those members of the fire department are classified as fire fighters (the entry level position), fire motor operators (the truck or engine driver), fire captains (the person in charge of a truck or engine company), district chiefs (the person in charge of one of the five fire districts in the city), deputy chiefs, the assistant chief, and the chief of the department. There are other specialized positions in the fire department, such as fire marshal or the director of the fire school, but the aforementioned positions constitute the active fire fighting force. All promotions in the fire department are from within;

it is not possible to begin employment with the fire department other than at the fire fighter level. (Exhibits 36-39; Hall Deposition, 6, 48; White Deposition, 102).

19. There are at present no Blacks, Indian-Americans, or Mexican-Americans employed with the Minneapolis Fire Department. (Exhibits 48-49; Hall Deposition, 41).

20. The last Black man hired as a fire fighter with the Minneapolis Fire Department was so hired in 1944. He was dismissed after four months' employment, for alleged violations of the uniform requirement. His abrupt dismissal occurred in circumstances which suggest that he may have been dismissed because of his race. (Hall Deposition, 42; Exhibits 88-91).

21. One Black man was employed with the fire department up until 1962, when he retired as a district chief. This man was relatively light complected. Chief Hall said of him: "I personally—he's a good friend of mine, I call him a Negro. I don't know whether he would admit to it, but I can personally say he is a Negro." (Hall Deposition, 42).

22. The United States Census Bureau Reports for the year 1970 indicate that Minneapolis had a population in that year of 434,400 persons, of which 19,005 or 4.37% were Black and a total of 27,986 persons or 6.44% were non-white (including Blacks). (Stipulation, ¶ 65, Table III).

23. In 1960, the non-white population of Minneapolis was 15.594 or 3.23%. (Stipulation, ¶65, Table III).

24. A minority employee census taken in July of 1970 revealed that 5.29% of all persons employed by the City of Minneapolis are non-white. (Exhibits 48-49).

25. There is now and has been for the past twenty-five years a gross disparity between the percentage of non-white persons in Minneapolis and the percentage of non-white persons employed with the Minneapolis Fire Department.

26. There is now and was in 1965 a gross disparity between the percentage of non-white persons employed by the City of Minneapolis as a whole and the percentage of non-white employees in the Minneapolis Fire Department. Since there has never been more than one minority fireman with the Minneapolis Fire Department in the last 25 years, the very same disparity revealed by the minority employee censuses taken in 1965 and 1970 would have existed in earlier years. (Exhibits 47-49)

27. The statistical data referred to in the preceding paragraph is prima facie support for the inference that racial discrimination has been practiced in the hiring of fire fighters over the last twenty-five years.

28. No evidence has been presented to the Court which rebuts the inference of racial discrimination based upon statistics alone. On the contrary, the facts stipulated by the parties, the exhibits in evidence, and the testimony in open court establish that the present all-white fire department is the result of hiring practices and procedures which, whether by design or not, discriminated against minority applicants as is further described below.

29. Written examinations have been used as a part of all civil service fire fighter examinations. These examinations have been of considerable difficulty. Over a twenty-year period from 1948 through 1968, a total of 2,404 persons took the written examinations. Only 1,308 of these

persons attained a passing score of 70.0%, or 54.41% of the total. The percentage of persons passing the examination varied from a low of 40% in 1968 (examination number 7737) to a high of 64.67% in 1952 (examination number 4523). During that period, a total of 22 identifiable minority persons took the fire fighter examinations. Six of these persons passed, or 27.27%. While the group is not large, and there may have been more minority group applicants who took the test but cannot now be identified, these scores indicate that minority group applicants did substantially less well on the examinations given. (Stipulation ¶¶ 20-21.)

30. It is now generally recognized that minority group persons will often score lower than white persons on an examination which utilizes a formal English vocabulary. Likewise, an examination which utilizes the street language of Blacks would discriminate against white applicants. An employment test which is thus "culturally biased" against any group will tend to eliminate persons of that group without necessarily establishing that they are not likely to succeed in the employment sought.

31. The four past fire fighter examinations (Exhibits 32-35), given in the years 1957 through 1968, are all representative of the type of written examination which can have a discriminatory effect against minority persons. These examinations utilize a formal English vocabulary and assumed a background in fire fighting practices and procedures. It is highly probable that they were in fact culturally biased against minority applicants, and thus served not only to eliminate minority applicants but also to deter minority applicants from applying.

32. No effort was ever made prior to the current examination period to analyze the fire fighter examinations to determine whether they were culturally biased or whether they were valid predictive instruments for use in selecting fire fighters. (White Deposition, 78).

33. The four past fire fighter examinations (Exhibits 32-35) were used again and again in substantially the same form. (Stipulation ¶¶ 18-19; White Deposition, 75-78).

34. There was no proven and compelling employment selection purpose served by the use of these four examinations. Indeed, since fire fighter employment entails an eight-week training course, with on-the-job training, and continuous retraining thereafter, this type of general achievement examination was not an adequate selection device to determine which applicants could learn the fire fighter duties and responsibilities and perform capably on the job.

35. By the very routine involved in civil service examining, the Civil Service Commission staff was on notice that few of the past applicants were Black. The continued use of these examinations may not have been done with the conscious intent to discriminate, but nevertheless, a discriminatory result ensued. (White Deposition, 75-80).

36. From the years 1950 through 1968 (examination number 7492) the announcement for the fire fighter position (which is actually the examination plan approved by the Civil Service Commission stating the official qualifications for the job) contained the statement that the applicant must list all offenses for which he had been arrested. These announcements stated that all applications are checked with the Police Department. The following statement also appeared:

> Your application will not necessarily be rejected because of any past arrest, except for a felony, but if there is any falsification of your record in your sworn application, your application will be rejected. (Exhibits 3-10).

These same announcements stated that an applicant will be rejected for conviction of a felony and may be rejected for conviction of any crime. (Exhibits 3-10; Stipulation ¶31).

37. In fact, an applicant was not rejected on the basis of an arrest record, but only on the basis of a conviction record. To this extent the statement quoted in paragraph 36 was misleading. (White Deposition; 25).

38. Although the Commission staff apparently has always read "arrest record" to mean "conviction record" the confusion between the terms "arrest" and "conviction" was evident in the testimony to two of the present Civil Service Commissioners.

39. The announcements for the fire fighter examination in the years 1950 through 1961 stated that an applicant will be required to report for fingerprinting and will be rejected for refusal to be fingerprinted. (Exhibits 6-10; Stipulation ¶ 32).

40. The announcements for the fire fighter examinations from 1964 through 1968 (examination number 7492) stated that an applicant may be required to report for fingerprinting and will be rejected for refusal to be fingerprinted. (Exhibits 3-5; Stipulation ¶ 33).

41. For the second examination given in 1968 (number 7737), the announcement contained the following statement:

Arrest record: Must be satisfactory. (No felonies or serious crimes.)

That same announcement contained the same statement quoted in paragraph 36 above, requiring that all arrests be listed. (Exhibit 2; Stipulation ¶ 34).

42. The statement with reference to arrests in the past fire fighter announcements, even if it was not really enforced, would discourage persons with an arrest record from applying for the fire fighter position.

43. In the years from 1945 through 1969, the Annual Reports of the Minneapolis Police Department reveal that arrests made of non-white persons constitute a percentage of all arrests made which increases from 9.22% in 1945 to 13.37% in 1950 to 20.53% in 1960 to 26.94% in 1969. United States Census Reports indicate that the percentage of non-white persons in Minneapolis increased from 1.07% in 1940 to 1.62% in 1950 to 3.23% in 1960 to 6.44% in 1970. Comparison of the census data with the arrest data reveals that there is and has been a substantial and significant disparity between the percentage of non-white persons in the city and the percentage of non-white persons arrested. (Exhibits 81, 85; Stipulation ¶ 36, ¶ 65, Table III).

44. Since the percentage of arrests was substantially higher for non-white persons in Minneapolis, the purported arrest record qualification would have had a decided discriminatory effect in discouraging non-white persons from applying for the fire fighter position.

45. This discriminatory effect can in no way be justified; for the Commission itself did not claim to use arrest

records as a fire fighter qualification. Further more, an arrest record, per se, is not proof of any criminal act, and bears no rational relation to ability adequately to perform as a fire fighter.

46. The announcements (examination plans) for fire fighter from 1950 through 1968 contained a requirement that a conviction for a felony was an absolute bar to employment as a fire fighter. No distinction was made between types of felonies. The number of years between the conviction and the date of application was not considered. Furthermore, the applicant could be disqualified for any convictions, including misdemeanors, although the manner in which this disqualification was implemented was not spelled out in detail. (Exhibits 2-10; White Deposition, 24-25; Stipulation ¶ 31).

47. Like arrests, convictions of felonies have also involved a percentage of non-white persons which is substantially in excess of their percentage in the population.

48. In 1969, on the basis of referrals made to the Hennepin County Department of Court Services, it appears that 12.19% of the male convicted felons so referred were Black, that 3.56% of such persons were Indians, and that a total of 16.44% of such persons were non-whites. (Stipulation ¶ 37-38).

49. The 1970 Census Reports show that 9,345 of the 198,845 males in Minneapolis are Black, or 4.70%. On a countywide basis, for the Court Services data would reflect Hennepin County as a whole, the percentage would be even lower. (Exhibit 85; Stipulation ¶ 65, Table IV).

50. The Reports of the Minnesota Bureau of Criminal

Apprehension for the years from 1964 to 1970 indicate that the percentage of non-whites convicted in all Minnesota district courts has been substantially higher than the percentage of non-whites in the population as a whole. Since over half of the Blacks in Minnesota live in Minneapolis, it is reasonable to infer that the disparity revealed by the 1969 Court Services data has existed for previous years as well. While no data has been submitted to the Court for convictions by race in years prior to 1964, the available Minneapolis Police Department arrest statistics strongly suggests that the present percentages of non-white convictions would have prevailed in earlier years as well. (Exhibits 81-85; Stipulation ¶¶ 37-44, 65, Tables II, V, VI.)

51. The conviction record requirement as stated in these fire fighter examination plans, especially the absolute bar for the conviction of any felony, would necessarily have the effect of deterring persons with a record of convictions from applying for the position of fire fighter. Although out-of-state convictions were not ordinarily considered (White Deposition, 18), the references to fingerprinting and the strong statement regarding the need to state all convictions (Stipulation ¶¶ 31-34) would have the effect of deterring anyone who had a felony conviction anywhere from applying. It is evident from the Hennepin County and Minnesota felony conviction statistics that this conviction record requirement would be a qualification which would deter more non-whites than whites, on a proportionate basis. The relatively small number of Black applicants in the years 1948 through 1968 can be explained, at least in part, by the absolute bar imposed on persons convicted by a felony and by these other strongly stated requirements.

52. No compelling employment purpose was served by the absolute felony bar to employment as a fire fighter, especially since no distinction was made between types of crimes, no consideration was given to the length of time which elapsed between the conviction and the application, and no effort was made to determine what convictions reasonably can be said to constitute a bar to employment as a fire fighter. For the 1970 examination plan, a sliding point scale was adopted which distinguished between convictions on the basis of length of time between the date of conviction and the date of application. (Exhibit 67). That sliding point scale is now in the process of further revision. But there is no evidence which suggests that there is any rational basis for an absolute felony bar, such as was applied up through 1968, as a qualification for the fire fighter position.

53. Within the past year, increased efforts have been made to obtain a substantial number of minority applicants for the fire fighter position. At least twenty-six of the total of 494 applicants were minority persons. In the previous 22 years, there were only 24 identifiable minority (Black) applicants. To a significant extent, this small number reflects recuitment efforts which were not directed in any way at obtaining minority applicants. (Stipulation ¶¶ 8, 29-30).

54. There are three newspapers in Minneapolis, the Minneapolis Spokesman, the Twin City Observer, and the Twin City Courier, which reach a large portion of the minority community. Until 1965, there was no advertising of the availability of fire fighter positions in these newspapers. These papers were used in the 1970 recruitment program

(Exhibit 62) but prior to that time there was little use made of them. One fire fighter advertisement appeared in the Spokesman on August 3, 1967 (Exhibit 97), but this was after applications closed for the fire fighter positions then open on July 31, 1967 (Exhibit 4). There was testimony to the effect that the Observer and the Courier were used between 1965 and 1970 (White Deposition, 72-74), but the defendants, who have records of such advertising, did not present any evidence regarding when these advertisements appeared. The Civil Service Commission did advertise other positions in the Spokesman during that time, including patrolman and civil rights department director. (Exhibits 97, 101). The 1970 minority employee census for Minneapolis indicates that minority employment efforts in the Police Department were more successful. (Exhibit 48-49).

55. Prior to 1965, recruiting of fire fighters involved advertising in the two major daily newspapers in Minneapolis, advertising in the official legal newspaper, Finance and Commerce, and posting of announcements in the City Hall and the fire stations. No affirmative recruitment efforts comparable to those made in 1970 were made in any previous recruitment period. (White Deposition, 72-75).

56. In a report to the Mayor of Minneapolis issued in 1965, the Mayor's Commission on Human Relations found that a passive recruitment system was probably a major factor accounting for the low percentage of non-white employment in the City as a whole. (Exhibit 47). The evidence presented to the Court substantiates this finding with respect to the fire department. White fire department personnel and white city employees who knew of fire fighter openings can reasonably be expected to spread the word of

such openings to other white persons. And despite a history of only one minority fire fighter over a period from 1945 to 1962, and none since then, there was no aggressive minority recruitment program for fire fighters until 1970.

57. During the period when fire fighters were being recruited in 1970, there were efforts made by the Civil Service Commission to make direct contact with prospective minority applicants. (Exhibit 58). Those efforts were made in cooperation with the MOER Fireman Employment Subcommittee, a group which was formed under the auspices of Mobilization of Economic Resources (MOER), the local OEO anti-poverty agency. Prior to 1970 efforts were made to inform community agencies of the availability of fire fighter positions by mailing announcements to them, but no effort at positive recruitment, such as was done in 1970, was made in earlier years. (White Deposition, 73-75).

58. Another factor in the creation of an all-white fire department in Minneapolis was the bad reputation which that department had in the minority community in Minneapolis for fair hiring practices with respect to minority persons. Testimony given at the hearing by Black residents of Minneapolis, including longtime residents and more recent arrivals, including younger men recently active in the work of the MOER Subcommittee as well as older men who had been active in the minority community for many years, established that the minority community has viewed the Minneapolis Fire Department as an agency of the city in which they were not welcome. This view of the fire department in the minority community was corroborated by the testimony of the former executive di-

rector (a white man) of the former Minneapolis Fair Employment Practice Commission and by the defendant White. This bad reputation of the fire department may be traced in part to incidences of possible overt discrimination as in the cases of Payne Calhoun (Exhibits 88-91) and Matt Little (Exhibits 76-77). But the breadth of this bad reputation results, as much as anything, from the fact that minority persons had not seen their fellows on fire trucks over the past twenty-five years.

59. There are no oral examinations now used in conjunction with the fire fighter examinations. (Exhibit 1). They have not been used since 1955. (Stipulation ¶ 27). Oral examinations were given in 1950, 1952, and 1955. (Stipulation ¶ 22, Exhibits 9-10). At least three examiners were involved in each oral examination, with the final grade on the oral examination being an average of the three scores. (Exhibits 18-29, 77; Stipulation ¶ 25).

60. During the three years oral examinations were used, a total of 326 persons took the examination. Three Black men took the oral examinations; one in 1950 and two in 1952. The only person to fail on an oral examination was Matt Little, a Black man who took the oral examination in 1950. He was the only applicant out of 115 to fail that examination in 1950. (Exhibits 18-20, 76, 77; Stipulation ¶¶ 23-26).

61. Mr. Little received grades of 65%, 70% and 70% from the three examiners. He was assigned an average grade of 68.33% by the Civil Service Commission. His grade of 68.33% was significantly lower than any other oral examination grade given in 1950, or in the years 1952 and 1955. (Exhibits 20, 76, 77; Stipulation ¶¶ 25-26).

62. The statistical evidence alone supports an inference that racial discrimination was involved in Mr. Little's failure on the oral examination in 1950.

63. In the course of an investigation of a charge of racial discrimination with respect to Mr. Little's grade by the former Minneapolis Fair Employment Practice Commission, the examiner who scored Mr. Little 65% made comments to the effect that he didn't think it would be good for only one Black man to join the department, that he thought Mr. Little's service in the medical corps during the war meant that he was carrying slop buckets, and that he was surprised that Mr. Little was not a flashy dresser. Despite his denials of any attempt to discriminate against Mr. Little, the evidence points directly to the fact that Mr. Little failed the oral examination because of his race. (Exhibits 76-77).

64. The Fair Employment Practice Commission, in its attempt to reach a settlement in the case of Mr. Little, failed to obtain an agreement with the Civil Service Commission that the decision of the oral examiners should be overruled. The Fair Employment Practice Commission minutes of December 4, 1950 state that "the Civil Service Commission had agreed to change its examination procedure for the future so that a grade of 70 will no longer be required in oral examinations." (Exhibit 76).

65. The examination plan for the fire fighter examinations given in 1950, the time when Mr. Little took the examination, states that the written examination will be given a weight of eight, the oral examination will be given a weight of two, and that a "minimum of 70 per cent is required in all parts of the examination to qualify." (Ex-

hibit 10). There is no existent copy of the examination plan for 1952 (Stipulation, page 2), but the examination plans for 1955 and 1957 contain identical statements. (Exhibits 8-9). No change was made until 1957, when, as the minutes of the Civil Service Commission state, the examination plan was amended because "a study had been made of the last three examinations and it was found that no one had been disqualified by the oral examination." (Stipulation, ¶ 27). The last three examinations referred to would include the 1950 examination, which Mr. Little failed.

66. The continued use of oral examinations after the Matt Little incident reflects an indifference by the Civil Service Commission to the use of examination procedures which had proven susceptible to racial discrimination.

67. From 1950 through 1964 the Civil Service Commission required that all persons who applied for the fire fighter position must be high school graduates, except that veterans could qualify with a G.E.D. certificate or its equivalent. In 1967 and 1968, a high school education was still required, but all persons, not only veterans, were permitted to qualify with a G.E.D. or its equivalent. Throughout this entire time, the education requirement had to be satisfied as of the time the application was submitted. (Exhibits 2-10).

68. Prior to 1963, there is no data available regarding the relative numbers of minority students in Minneapolis who completed a high school education. From 1963 on, the Minneapolis Public Schools have conducted "sight counts" of students present in school on a given day each year either in November or December. These studies show

that the percentage of Black, Indian-American and Spanish-surnamed-American students at the elementary level is consistently higher than the percentage of such students in junior high school. Furthermore, the percentage of such students in junior high school is consistently higher than the percentage of students in senior high school (Exhibits 78-80).

69. In 1963, Black students constituted 6.3% of all elementary school pupils, but only 3.0% of all senior high school students were Black. In that same year, 1.5% of the senior high school students were Indian-American. In each year since 1963, the percentage of Black and Indian-American pupils in senior high school has been substantially less than the percentage of such students in the elementary grades. In 1969, there were about one-third less Black pupils in grade twelve in senior high school (6.48%) than there were in the city's elementary schools. These figures demonstrate persuasively that a requirement of a high school diploma is going to disqualify a higher proportion of Blacks than Whites. (Exhibits 78-80).

70. Although there is no public school data for the years prior to 1963, the census data for 1960 indicates that a substantially smaller percentage of non-white persons in Minneapolis have completed four years of high school education. On the basis of that census data and on the basis of the continuing trend evidenced by the school data, it is reasonable to infer that the high school education requirement for 1968 and the years prior to that would have had a substantial discriminatory effect against non-white applicants. Since the qualification is stated in the announcement, the effect would have been evidenced in substantially smaller numbers of non-white applicants. (Exhibit 85; Stipulation ¶ 65, Table VIII).

71. There is no indication that the high school education requirement was an essential and necessary qualification for the position of fire fighter. The evidence shows that no substantive knowledge of fire fighting practices or procedures is essential for the fire fighter applicant. The evidence also indicates that the essential prerequisite for a fire fighter is the ability to learn these fire fighting practices and procedures. There is no evidence which establishes that a high school education is in any respect a necessary indication that the applicant has such ability to learn. An educational requirement for promotions within the department may have some justification, but at the entry level position of fire fighter there is no necessary basis for that position. (White Deposition, 51; Hall Deposition, 58-59; Exhibit 45).

72. The Civil Service Commission gives an absolute preference in certification in all positions, including fire fighter, to qualified veterans. Under state law, a veteran, unless he enlisted from the State of Minnesota, must have lived in the state and locality to which application is made for a period of five years (excluding military service time) in order to qualify. (Exhibit 56; M.S.A. §197.45).

73. The importance of having a veterans preference is exemplified by the fact that of the persons who ere employed as fire fighters with the Minneapolis Fire Department as of July 10, 1970, who were hired as a result of examinations conducted from 1957 through 1968, a total of 139 had claimed the veterans preference. In percentage terms, approximately 60% of these fire fighters had claimed the veterans preference. State law also requires that a five point preference be given to similarly qualified

veterans on promotional examinations. (M.S.A. § 197.45; Stipulation ¶¶ 46-64).

74. The importance of claiming a veterans preference is reflected in the fact that veterans are hired first, with nonveterans, even though they have higher scores, waiting for a year or more to be hired after the first veterans are hired. Thus, as a result of the fire fighter examination given in 1961, a group of ten veterans was hired first (Stipulation ¶ 55), approximately one year later another group of five veterans was hired (Stipulation ¶ 56), approximately three months later another group of eight veterans was hired (Stipulation ¶ 57), and seven months after that a group of one veteran and ten non-veterans was hired (Stipulation ¶ 58).

75. While the durational residency requirement may appear neutral on its face, the five-year period of residency serves to eliminate a disproportionate number of minority applicants. The census data for 1960 reflects the commonly known fact that there has been an influx into northern central cities of minority persons. The 1960 Census Report reflects this movement in statistics which show the length of time in which housing units have been occupied by white households and non-white households respectively. These figures show that more white households on a proportionate basis, have occupied the specific housing units in which they reside in 1960 than non-white households have. Thus, 44.08% of white households lived in the same dwelling in 1960 as in 1954; only 21.41% of the non-white households lived in the same dwelling in 1960 in which they lived in 1954. These figures reflect substantially greater mobility on the part of non-white households. It

follows that non-white persons would have been disqualified for a veterans preference to a far greater extent than white persons. (Exhibit 85; Stipulation ¶ 65, Table IX).

76. The data with respect to current applicants reflects a similar disproportionate effect of the durational residency requirement for minority applicants. Approximately 13 applicants who are residents of Minneapolis would be unable to claim a veterans preference because they do not satisfy the five-year requirement. Five of these are minority applicants. (Stipulation ¶ 11, Group I-B).

77. The disproportionate effect of the durational residency requirement on minority persons was another factor which effectively would have deterred them from applying for the fire fighter position.

Findings with Respect to the Most Recent Examination Plan and Recruitment Period

78. Some changes have been made in the hiring practices and procedures of the Minneapolis Civil Service Commission with respect to all classifications of employees since 1965.

79. With respect to recruitment for fire fighters, an effort was made to advertise the availability of fire fighter employment in the local newspapers which reach the minority community. As has already been stated, an advertisement was placed in the Minneapolis Spokesman in 1967, although it appeared too late to be of any use. Advertisements were also placed in the Observer, although there is no indication in the record how extensive this advertising was before 1970.

80. In 1969, a Black Urban Corps intern working with

the Civil Service Commission staff submitted a report to the Commission regarding the effect of civil service selection procedures on minority groups. This report was highly critical of civil service requirements which were higher than necessary for the job offered and which incorporated examinations which were slanted to a white middle class vocabulary. The report also recommended that the Commission adopt a statement incorporating specific procedures which would be adopted to assure equal employment opportunity. (Exhibit 50).

81. As a result of this report, the Civil Service Commission, in November, 1969, adopted a Policy Statement on Employment which incorporates many of the suggested changes. According to that Policy Statement, the Commission is now attempting to assure that job qualifications stated in its examination plan are relevant to the actual requirements of the job and that examinations are analyzed to remove elements of cultural bias which screen out otherwise capable minority applicants. (Exhibits 51-52; White Deposition, 68-69).

82. Significant changes in fire fighter recruitment were implemented by the Civil Service Commission staff in cooperation with the MOER Firemen Employment Subcommittee. This Subcommittee was established under the auspices of MOER. In addition to members of the MOER staff, the defendant White and Miss Barbara Hanson of the Civil Service Commission staff were active members of this staff. Several fire fighters were also active members of the Subcommittee, including Gordon Norheim, the president of the Fire Fighters Association, the local fire fighters union. These fire fighters volunteered their own

time to aid the Subcommittee in its efforts to obtain minority fire fighters. Representatives of other community agencies which are active in furthering minority employment were also members of the Subcommittee. During the late winter and spring of 1970, this Subcommittee attempted to effect changes in Civil Service practices regarding the hiring of fire fighters, with special emphasis on the examinations used, the requirements for the job, and recruitment procedures.

83. On April 23, 1970, the Civil Service Commission approved the examination plan for fire fighter. This plan changed some of the requirements for fire fighter which had been incorporated in earlier fire fighter examination plans. Over the protest of the defendant Hall, the height requirement was lowered from 5'8" to 5'6". The eyesight requirement was liberalized. The entry level age was lowered from 21 to 20. An applicant was permitted to obtain a G.E.D. certificate before being hired; he no longer had to have such a certificate at the time he applied. And the absolute felony conviction bar was eliminated. (Exhibits 1, 2, 69—minutes of CSC, 4-23-70.)

84. On May 12, 1970, Fred Herndon, who was then Chairman of the MOER Subcommittee, sent a letter to the defendant Proctor, which outlined the Subcommittee's recommendations regarding fire fighter employment requirements. The Subcommittee suggested changing the minimum age requirement to 18 years, dropping the high school or G.E.D. equivalent requirement except for promotional purposes, dropping the height requirement, eliminating the arrest-conviction requirement as stated, and permitting an applicant to obtain a valid driver's license by the

end of six months' employment. The Subcommittee also recommended changes in the written examination. (Exhibit 69—letter of May 12, 1970).

85. On May 14, 1970, in response to the Subcommittee's proposals, the Civil Service Commission scheduled a special meeting to study these recommendations. (Exhibit 69—CSC minutes of 5-14-70).

86. On the following day, May 15, 1970, the defendant Hall distributed to all fire department personnel a memorandum which characterized the Subcommittee's proposals as an effort to lower standards. In this memorandum he made specific reference to Civil Service Commission minutes which related that Gordon Norheim, the Fire Fighters Association president who had served on the MOER Subcommittee, had stated that he did not think that height was a relevant factor in fire fighting. (Exhibit 69—memorandum dated May 15, 1970).

87. Participation by fire department personnel in the activities of the MOER Subcommittee lessened after this memorandum was issued.

88. On May 27, 1970, the defendant Hall wrote to the defendant Proctor with recommendations for the fire fighter examination plan, which included keeping the age requirement at 20 years, maintaining the 5'8" height requirement, requiring minimum college credits, and requiring a Minnesota chauffeur's license. (Exhibit 69—memorandum dated May 27, 1970).

89. On May 28, 1970, the Civil Service Commission considered the defendant Hall's letter of May 27, 1970, and the memorandum he issued to all fire fighter personnel

on May 15, 1970. The defendant Glover directed that he be placed on record reprimanding the defendant Hall for issuing a memorandum "which through misstatement of fact, distortion, and innuendo sets the climate for discouraging qualified minority persons from applying for the forthcoming fire fighter examination." The Commission unanimously agreed to refer the matter to the City Council for investigation and action. The Commission also scheduled a public hearing on the requirements for the fire fighter position. (Exhibit 69—CSC minutes, 5-28-70).

90. The Commission recommendation that the City Council investigate and take action with respect to the defendant Hall's memorandum (Exhibit 69—letter of June 5, 1970) has not been followed up by the Commission.

91. After a public hearing held on June 8, 1970, the Civil Service Commission voted, with the defendant Glover dissenting, rejected a proposal submitted by the Urban Coalition of Minneapolis and supported by the MOER Subcommittee that a specified number of fire fighter positions be set aside for minority applicants. The specific proposal considered by the Commission was the defendant Glover's motion that "24 Fire Fighter positions be set aside for qualified eligibles, 10 to be appointed from the up-coming eligible list, and 14 over the next two years." (Exhibit 69—letter dated July 13, 1970, CSC minutes for 8-13-70, CSC minutes for 8-20-70, CSC minutes for 9-10-70).

93. During the time from May, 1970 through September, 1970, when these efforts were being made by the MOER Subcommittee and other groups to effect changes in the fire fighter qualifications and to seek Commission approval of the proposal setting aside fire fighter positions

for qualified minority applicants, increased efforts were being made to recruit minority applicants for fire fighter and changes were made in the written portion of the fire fighter examination.

94. The Civil Service Commission staff relied heavily upon suggestions by the MOER Subcommittee in implementing its recruitment program. The Commission staff advertised the position in the Spokesman, Observer, and Courier, as well as in other media. Fire fighter applications were sent by the Commission staff to various community agencies and to a large number of prospective minority applicants whose names were submitted by these agencies. The Commission staff initiated CORC—Civil Service Opportunity Recruiting Clinic—a mobile employment recruitment van which went to community centers throughout the city during the time fire fighter applications were received. The Commission staff also notified prospective applicants of the availability of pretest tutoring sessions which were held throughout the city at community centers and which were conducted by members of the Commission staff and the fire fighters who volunteered their time. (Exhibit 58-64; White Deposition 57-60, 74-75, 100).

95. The MOER Subcommittee personnel who contacted prospective minority applicants were met in the great majority of cases with the reaction that there was no chance for a minority person to become a fire fighter with the Minneapolis Fire Department.

96. As a result of these recruitment efforts, a total of at least 26 Blacks, Indian-Americans and Mexican-Americans applied for the fire fighter position out of a total of 494 applicants. (Stipulation ¶¶ 4, 8).

97. The Civil Service application form does not require an applicant to state his race. A supplementary card can be filled out which does state race. (Exhibit 75). Since all applicants did not fill out this supplementary form, the list of minority applicants in the stipulation may be incomplete. However, a comparison of the names of currect applicants contained in the Stipulation, ¶¶ 5-14, with the names of persons supplied by the various community agencies contained in the lists which make up Exhibit 60, indicates that only one name on those lists, that of Kenneth Zubrod, does not appear among the names listed in paragraph eight of the Stipulation. Whether Mr. Zubrod is a minority applicant is not clear from the evidence. In any case, since the major thrust of the minority recruitment program was through these agencies, the number of additional minority applicants is not likely to be high.

98. The existence of an all-white fire department, the failure of the defendant Hall to assist in minority recruitment, and the positions taken by the defendant Hall in his memorandum of May 15, 1970 and his letter of May 27, 1970 were a serious impediment to effective minority recruitment for fire fighters in the summer of 1970.

99. The defendant Hall's letter to the defendant Proctor dated May 27, 1970 and incorporated in Exhibit 69, especially insofar as it requests minimum college credits and a chauffeur's license as entry level requirements was, in the context of the MOER Subcommittee's efforts, a rebuff to efforts to implement an effective minority recruitment program.

100. The defendant Hall had no basis for suggesting that a chauffeur's license be required for the fire fighter

applicant. While the fire department does legitimately require engine and truck drivers to have a chauffeur's license, the fire department operations manual prohibits a probationary fire fighter (his first six months) from driving this equipment. Furthermore, only fire motor operators (drivers), regularly assigned Chief's Aides, and fire fighters on the fire motor operator eligibility list are required to have chauffeur's licenses. (Exhibits 45, 72-74).

101. The current examination for fire fighters includes a written examination and an agility (physical training) test. Eighty per cent of the score is based on the written examination and twenty per cent of the score is based on the agility test. An applicant must attain a qualifying score of seventy per cent in both examinations. (Exhibit 1).

102. As a result of the discussions with the MOER Subcommittee in the furtherance of the Civil Service Commissions employment policy (Exhibits 51-52), the Civil Service Commission staff rejected the previous written fire fighter examinations (Exhibits 32-35) and developed a new written examination which required the applicant to answer fifteen to twenty multiple-choice questions based upon each of the three films to be shown at the examination. The examination also included a standard form mechanical comprehension test. (Exhibit 23A; White Deposition 38-42).

103. On August 20, 1970, the City of Minneapolis entered into a contract with Personnel Decisions, Inc., a consultant firm providing professional services to businesses and governmental bodies in vocational testing and related fields. This contract required the consultants to en-

gage in certain test validation studies and to compile a manual for use by the Civil Service Commission staff in test validation. (Exhibit 55).

104. In conjunction with Personnel Decisions, Inc., the Civil Service Commission staff planned validation studies of the proposed written examination. (White Deposition, 41-57).

105. Until this Court enjoined the administration of the fire fighter examination on November 5, 1970, that examination had been scheduled to be given on November 16, 1970. At that time, these validation studies had not been completed.

106. At the time her deposition was taken on February 11, 1971, the defendant White testified that the written examination was ready to be given, subject to studying the test and investigating its validity. At the hearing she indicated that a new examination would be devised or purchased because the scores on the proposed examination tended to bunch in such a manner as to make it an inadequate selection device.

107. The defendant White and the defendant Gallagher both testified that no fire fighter examination would be given until studies had been completed which establish that the examinations are not biased against minority applicants and do predict job performance as a fire fighter.

108. The present examination plan states that an applicant for the fire fighter position must have a satisfactory arrest record. Promotional literature also refers to a satisfactory arrest record. (Exhibit 1; White Deposition, 14-16).

109. According to the testimony of the defendant White, the Civil Service Commission staff did not and does not actually consider a fire fighter applicant's arrest record when determining his qualifications. (White Deposition, 14-16).

110. The testimony of the defendants Glover, Gallagher, and Hall reflected considerable confusion on their part whether the Commission staff did in fact consider arrest records. Their confusion must be shared with prospective fire fighter applicants.

111. Considering the arrest data contained in Stipulation ¶ 36 and Exhibit 81, it is apparent that any use of arrest records as an employment qualification is going to weigh most heavily against minority applicants.

112. An arrest record in itself is not of sufficient probative value to use it in selecting fire fighters, especially when that requirement as stated in Exhibit 1 would have the effect of deterring a proportionately larger number of minority applicants from applying for the position.

113. The present Civil Service Commission practice is to consider only a conviction record in determining an applicant's qualification for the fire fighter position. A point system was adopted by the Commission to differentiate between convictions for misdemeanors and felonies and, with respect to felonies, to differentiate between recent and earlier convictions. (Exhibit 67). The Commission has rejected the earlier position that any conviction of a felony is an absolute bar to employment as a fire fighter. But the Commission is also considering making changes in the present system set forth in Exhibit 67. The procedure intended to be followed with respect to the present group of fire fighter applicants is not now established.

114. The conviction record contained in Stipulation ¶¶ 37-44 and Exhibits 82-84 when compared with the census data contained in Stipulation ¶ 65 and Exhibit 85 establishes that any conviction record requirement for fire fighter applicants will affect a proportionately larger number of minority applicants.

115. The defendant Commissioners will reconsider an applicant's disqualification on the basis of a conviction record if he requests reconsideration at the staff level and is not satisfied with the disposition made. However, there is no notice of the possibility of staff or Commission reconsideration contained in the Civil Service Commission rejection notice. The form used for that purpose also refers to "arrest record" rather than "conviction record" as the basis for the finding. (Exhibit 87).

116. The testimony of two of the defendant Commissioners indicates that no serious consideration has been given to establishing standards whereby the relation of the conviction of any particular felony or misdemeanor to adequate performance as a fire fighter can be judged. One of the testifying Commissioners was unaware of what distinction there was between a felony and a misdemeanor.

117. No compelling employment interest on the part of the Civil Service Commission has been established which supports disqualification of an applicant for fire fighter on the basis of a felony conviction which occurred more than five years prior to his application.

118. No compelling employment interest on the part of the Civil Service Commission has been established which supports disqualification of an applicant for fire fighter on the basis of a misdemeanor conviction which occurred more than two years prior to his application.

119. No compelling employment interest on the part of the Civil Service Commission has been established which supports disqualification of an applicant on the basis of felony or misdemeanor convictions without regard to the applicant's subsequent record, without regard to the type of criminal act involved, without regard to the circumstances in which the criminal act occurred, and without regard to the effect which that type of criminal behavior would have on the applicant's performance of fire fighter duty.

120. The present fire fighter examination plan (Exhibit 1) states the following educational requirement:

> High school diploma or G.E.D. certificate (If you are in the process of obtaining a G.E.D. certificate, your application may be accepted; however, you must have your G.E.D. completed before you are hired.)

121. Minneapolis Public School data indicates that there is a significantly higher drop-out rate for minority students than for white students. It follows that a disproportionate number of minority persons do not receive a high school diploma. (Exhibits 78-80).

122. The stated educational requirements have the effect of discriminating against minority applicants on the grounds of their race.

123. No substantive job knowledge is required of the fire fighter recruit when he comes to the fire fighter training school (drill school). He is not expected to know at that time the names and uses of the various fire fighting implements, apparatus, and equipment. He is not expected to know the procedures which are utilized by the Minneapo-

lis Fire Department. He is not expected to know principles upon which fire fighting techniques are based. (Hall Deposition, 13-37, 58-59).

124. The Minneapolis Fire Department seeks applicants who have the ability and the willingness to practice and to learn the procedures of fire fighting followed by the Minneapolis Fire Department. The requisite ability to learn does not imply the ability to have immediate and long-lasting retention of principles or procedures which are demonstrated on one occasion or on a few occasions, for the Minneapolis Fire Department engages in continuing retraining of all personnel on all aspects of fire fighting procedure and theory. (White Deposition, 51; Hall Deposition, 14-15, 25, 34-35, 58-59; Exhibit 45).

125. Attaining a high school diploma or a G.E.D. certificate may evidence the learning ability necessary for fire fighter training, but such education cannot be considered a necessary indication of such ability.

126. The currently scheduled written examination, when it is validated in accordance with the defendants' plans, should determine whether the applicant has the ability to learn necessary for fire fighter training and for adequate performance of fire fighter duties. (White Deposition, 51).

127. Formal education at the high school level or beyond may be necessary for higher ranking positions in the fire department (Exhibits 86, 96), but there is no evidence to suggest that high school education or its equivalent is essential for the entry level position of fire fighter.

128. Mere surmises by the defendants that education

is beneficial or that the better educated man will be better on the job, in the absence of an established relationship between formal education and success on the job, cannot justify the use of employment qualifications which will have a discriminatory impact on minority groups.

129. The present examination plan states that an applicant must be at least 20 years old but not yet 30 years old, except for veterans, who may apply up to age 35. (Exhibit 1).

130. The fire fighter hiring practices described above have discriminated against minority persons who are now aged 30 through 34 and no longer eligible for fire fighter employment unless they are veterans.

131. The defendant Hall stated that he would not favor lowering the minimum age to 18 years, but "would not put up very much opposition to it either." He suggested that a mature and stable individual would be required. He also indicated that he had had no experience with fire fighters aged 18 and 19. (Hall Deposition, 49-50).

132. The defendant Commissioners established the entry level age requirement of 20 years without reference to any established relationship between that age and the requirements and responsibilities of the position of fire fighter with the Minneapolis Fire Department.

133. The Court can take judicial notice of the fact that 18 and 19 year old men are members of the military service and are required to act responsibly under battlefield conditions which involve stress and tension equal to if not greater than the stress and tension involved in fire fighting.

134. The unemployment rate of minority males aged 18 and 19 is significantly higher than the unemployment rate of white males in that same age bracket. (Exhibit 95).

135. The chances of success of an affirmative recruitment program would be significantly increased if recruitment efforts could be directed at 18 and 19 year old minority persons.

136. If the requested minority preference is not imposed by the Court, the following procedure will be followed by the defendants in certifying fire fighter applicants:

a. An eligibility list will be established ranking those applicants who pass the examination in order of their average score on both the written and agility examinations.

b. Applicants must pass the medical examination.

c. First preference will be given to applicants who satisfy the one-year residency requirement in Minneapolis and who can claim a veterans preference under Minnesota law. These persons would be certified in order of their relative standing on the eligibility list.

d. Second preference would be given to applicants who satisfy a one-year Minneapolis residency requirement and who do not claim a veterans preference. These persons would be certified in order of their relative standing on the eligibility list.

e. Third preference will be given to applicants

who do not satisfy the one-year Minneapolis residency requirement but who do qualify as veterans. These persons would be satisfied in order of their relative standing on the eligibility list.

f. Fourth preference will be given to applicants who do not satisfy the one-year Minneapolis residency requirement and who do not qualify as veterans. These persons would be certified in order of their relative standing on the eligibility list. (Exhibits 56-57).

137. On the basis of the information contained in the applications completed by fire fighter applicants, it is possible to state in approximate terms the number of fire fighter applicants in each of the aforementioned preference groups, although there may be as much as a ten per cent error involving either underinclusion or overinclusion of applicants in each group. (White Deposition, 96-99).

138. The names of the current applicants and their probable classification within the aforementioned preference group are set forth in the Stipulation, ¶¶ 11-14. Considering the number of minority applicants in those groups, and the testimony of Elisabeth White at trial, if the requested minority preference is not granted, the chances are that one or maybe two minority applicants may be certified as fire fighters to fill the 40 positions presently available.

139. The practical result of the failure or refusal of the Court to grant a minority preference would be, in all probability, to limit the number of successful minority applicants, even if additional fire fighters are certified, to a very small number.

140. Even if adequate steps are taken to revise the fire fighter qualifications to remove existing requirements which create barriers to employment that affect a disproportionate number of minority persons, the addition of such a small number of minority persons to the Minneapolis Fire Department will not overcome the continuing affects of past discrimination and will not dispell the continued effects of that Department's bad reputation for fair employment practices with respect to minority persons. What is needed now to correct the effects of the past twenty-five years is the immediate certification of at least twenty minority fire fighters.

141. Of the current applicants for fire fighter positions with the Minneapolis Fire Department, approximately 13 persons are veterans and residents of Minneapolis who cannot claim a veterans preference because they have not been residents of the State and the City for the requisite five-year period. Approximately 20 applicants who are not residents of Minneapolis cannot claim a veterans preference because of failure to satisfy the durational residency requirement. (Stipulation, ¶ 11, Group I-B, ¶ 13, Group III-C).

142. The durational residency requirement in the veterans preference act imposes a penalty on otherwise qualified veterans, who do not meet the five-year requirement, for engaging in their constitutionally protected right to travel.

143. There is no evidence to suggest that there is a compelling state interest which is served by the durational residency requirement incorporated in the veterans preference act.

144. The defendants will not incur any significant administrative problems if the durational residency requirements are temporarily enjoined pending the hearing and determination of a three-judge court. There would be no need for the cessation of any certification of applicants.

145. Applicants for positions in the classified service of the City of Minneapolis who are qualified veterans except for the fact that they do not satisfy the durational residency requirement will suffer irreparable harm if the requested temporary restraining order is not issued enjoining the enforcement of that statute pending the hearing and determination of that issue by a three-judge court in that they will lose a preferred position on the eligibility list and will be denied the opportunity of employment and consequent loss of seniority rights which protect them in the case of lay-offs and which govern their opportunities for further promotion. In the case of the present fire fighter applicants, there are approximately 113 applicants who would be offered certification ahead of the thirteen veterans who could be in that group, but for the enforcement of the durational residency requirement. With a limited number of positions available, these thirteen veterans are unlikely to have any chance whatsoever for fire fighter employment.

146. The members of the class of veterans who are disqualified by the durational residency requirement of the Veterans Preference Act which was established by the order of the Court dated November 5, 1970, are adequately represented in the present action.

Conclusions of Law

1. This Court has jurisdiction over this action and these defendants under 28 U.S.C. § 1343(3) & (4).

2. The plaintiffs have established that the practices and procedures used by the Minneapolis Civil Service Commission over the past twenty-five years in hiring fire fighters involved a pattern and practice of discrimination by race in violation of 42 U.S.C. §§ 1981 and 1983 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

3. The plaintiffs have established that the practices and procedures used by the defendants in the past two years in hiring fire fighters did not comport with the effective affirmative action to dispel the present and continuing effects of past discrimination which the defendants are required to implement pursuant to 42 U.S.C. §§ 1981 and 1983 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

4. In the present action, this Court has the obligation to issue a decree which insofar as possible will eliminate the continuing effects of past discrimination in hiring of fire fighters for the Minneapolis Fire Department.

5. This Court has the power and the obligation under 42 U.S.C. § 1981 to impose a limited minority preference in hiring fire fighters for the Minneapolis Fire Department to assure that substantial elimination of the present effects of past discrimination is effected now.

6. The imposition of a minority preference and the necessary limited injunction against the application of M.S.A. § 197.45 and the application of provisions of the

Minneapolis City Charter requiring certification of eligible employees on the basis of their relative standing on competitive examinations under 42 U.S.C. § 1981 is not such injunctive relief as requires a three-judge court pursuant to 28 U.S.C. § 2281.

7. Implementation of the presently stated arrest (conviction) record and education requirements in the Minneapolis Civil Service Commission fire fighter examination plan number 83626 (Exhibit 1) violates 42 U.S.C. §§ 1981 and 1983, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution in that such implementation creates classifications which have the effect of discriminating against minority fire fighter applicants on the ground of their race, without any compelling state interest therefor and such standards are not reasonably related to the requirements for performance in the position of fire fighter with the Minneapolis Fire Department.

8. Implementation of the presently stated entry level age of 20 in the Minneapolis Civil Service Commission fire fighter examination plan number 8326 violated 42 U.S.C. §§ 1981 and 1983 and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution in that such requirement inhibits an effective affirmative recruitment program to secure minority applicants for the position of fire fighter and is not reasonably related to the requirements of such position.

9. Implementation of the requirement of Minneapolis Civil Service Commission fire fighter examination plan number 8236 which states that a non-veteran applicant must not have reached the age of thirty years violates 42

U.S.C. §§ 1981 and 1983 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in that it denies the opportunity for minority persons aged thirty through thirty-four years who have been subject to a pattern and practice of discrimination to apply for the position of fire fighter with the Minneapolis Fire Department without any compelling state interest justifying such denial.

10. This Court must maintain continuing jurisdiction of this action to assure the implementation of the relief granted.

11. The plaintiffs' request for an injunction against the enforcement of the five-year state and local residency requirement incorporated in the definition of "veteran" in M.S.A. § 197.45, Subdivision (1), presents a substantial constitutional question which requires the convening of a three-judge district court pursuant to 28 U.S.C. §§ 2281 and 2284.

12. Pending the hearing and determination of the application for said injunction, a temporary restraining order enjoining the enforcement of these durational residency requirements must issue pursuant to 28 U.S.C. § 2284 (3).

Dated: March 9, 1971.

/s/ EARL R. LARSON,
United States District Judge.

Minneapolis City Council
Official Proceedings
Regular Meeting

February 25, 1972

OFFICIAL PUBLICATION OF RESOLUTION passed by the City Council of the City of Minneapolis, Minnesota, at a regular meeting thereof held February 11, 1972, not approved by the Mayor and passed over his objections at a regular meeting held February 25, 1972.

(Published February 29, 1972, in Finance and Commerce.)

Resolution

(By Aldermen Bergford, Cairns, Brooks, Butler, Strauss, DeMars, Derus, and Erdall.)

Urging the Civil Service Commission not to appeal the decision of the Federal Court of Appeals relating to the hiring of minority groups in the Fire Department.

Whereas, the District Court in St. Louis has made a decision requiring the selecting of one minority fireman out of every three hired; and

Whereas, Minneapolis Fire Dept. leaders favor this solution to give minorities an increased opportunity to join the Fire Dept.; and

Whereas, the long delay involved in reaching this decision has resulted in a critically undermanned Fire Dept; and

Whereas, now is the time to make a decision and resume the hiring of badly needed firemen;

Now, Therefore, Be It Resolved by the City Council of the City of Minneapolis:

That the Civil Service Commissioners be strongly encouraged to abide by the St. Louis court decision and that no appeal by made to its ruling.

Passed February 11, 1972. Richard M. Erdall, President of the Council.

Vetoed February 15, 1972, by the Mayor.

Attest: Lyall A. Schwarzkopf, City Clerk.

State of Minnesota,

ss.

County of Hennepin.

I, Lyall A. Schwarzkopf, City Clerk of the City of Minneapolis, County of Hennepin, State of Minnesota, do hereby certify that the foregoing resolution was passed by the City Council of said City at a regular meeting thereof held February 11, 1972, and was returned by Charles Stenvig, Mayor, without his approval and stating his objections at a regular meeting held February 25, 1972.

I do hereby certify that at the regular meeting of February 25, 1972, said resolution was passed notwithstanding the objections of the Mayor, by a vote of more than two-thirds of all the members of the City Council; the vote being: Yeas, 10, nays, 3 (total number of Aldermen in the Council—13).

Therefore in accordance with the provisions of Section 1, Chapter 3 of the City Charter of the City of Minneapolis, said resolution has become a valid resolution, and I hereby certify that it has the same force and effect as if approved by the Mayor.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said City this 25th day of February, 1972.

LYALL A. SCHWARZKOPF,
City Clerk.

38640

[As reported in Finance and Commerce, February 29, 1972, p. 6, col. 6.]

Minneapolis City Council
Official Proceedings
Regular Meeting

March 10, 1972

Alderman Cairns moved that the City Attorney be directed to prepare an Amicus Curiae Brief on behalf of the City Council to be filed with the Supreme Court of the United States in the case of Gerald Carter, et al. v. Hugh Gallagher, et al., said brief to be supportive of the contentions of the Plaintiffs that the best interests of the City would be served by conclusion of the case at the earliest possible time and that the Writ of Certiorari not issue.

Seconded by Alderman Bergford.

Adopted. Yeas, 10; nays, 3, as follows:

Yeas—Aldermen Sivanich, Cairns, Strauss, Derus, DeMars, Bergford, Butler, Zollie Green, Brooks, President Erdall—10.

Nays—Aldermen Christensen, Anderson, Russell Green—3.

[As reported in Finance and Commerce, March 14, 1972, p. 7, col. 6.]